

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:MAN:TL-N-3914-99
PLDarcy

date:

to: District Director, Manhattan
Chief, Examination Division
Attn: Mr. John Petitio
Mr. Harry Ziethchick

from: District Counsel, Manhattan

subject: [REDACTED]

Tax year ended December 31, [REDACTED]
Consent to Extend the Statute of Limitations
On Assessment

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This memorandum responds to your request for advice on how the Internal Revenue Service can enter into a valid agreement to extend the statute of limitations on assessment of partnership items flowing to [REDACTED] (" [REDACTED] ") from [REDACTED] (" [REDACTED] "), a partnership subject to the uniform partnership audit procedures. I.R.C. § 6221 et. seq. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is also subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice.

ISSUE:

1. Whether the Internal Revenue Service and [REDACTED] can extend the statute of limitations to assess partnership items that flow to [REDACTED] from [REDACTED].

FACTS:

THE ADVICE IS RENDERED ON THE BASIS THAT ALL THE REPRESENTATIONS AND FACTS IN THIS MEMORANDUM ARE CORRECT. WE RECOMMEND THAT YOU VERIFY THIS INFORMATION. IF ANY OF THE REPRESENTATIONS AND/OR FACTS ARE INCORRECT OR CANNOT BE SUBSTANTIATED, WE MAY NEED TO MODIFY OUR ADVICE.

During [REDACTED], [REDACTED] was the common parent of a consolidated group of corporations. The Examination Division is currently auditing the [REDACTED] consolidated Federal corporate income tax return of [REDACTED]. During [REDACTED], a member of the [REDACTED] consolidated group, [REDACTED] ("[REDACTED]"), owned an indirect interest in [REDACTED]. The following list shows the [REDACTED] corporate structure and its interest in [REDACTED]:

1. [REDACTED] owned [REDACTED] percent of [REDACTED] ("[REDACTED]").
2. [REDACTED] owned [REDACTED] percent of [REDACTED] ("[REDACTED]").
3. [REDACTED] owned [REDACTED] percent of [REDACTED].
4. [REDACTED] had a [REDACTED] percent interest in [REDACTED] partnership ("[REDACTED]"), a partnership subject to the uniform partnership audit procedures. I.R.C. § 6221 et. seq.
5. [REDACTED] had a [REDACTED] percent interest in [REDACTED].

On its [REDACTED] Federal partnership income tax return ("Form 1065"), [REDACTED] claimed a low income housing tax credit in the amount of \$[REDACTED]. On [REDACTED], [REDACTED] and the Internal Revenue Service entered into an agreement (Form 870-P) in which the parties agreed that [REDACTED] could only claim a low income housing credit in the amount of \$[REDACTED]. Accordingly, the Internal Revenue Service and [REDACTED] agreed to a \$[REDACTED] adjustment ("Adjustment"). The Adjustment flows through to the [REDACTED] consolidated group.

The Internal Revenue Service and [REDACTED] do not want to assess the Adjustment at this time and seek to extend the statute of limitations to assess the Adjustment.

CONCLUSION:

A current officer of [REDACTED] and a representative of the Internal Revenue Service can enter into an agreement to extend the statute of limitations on assessment of the Adjustment.

DISCUSSION:

On [REDACTED], the Internal Revenue Service and [REDACTED] entered into an agreement with respect to the low income housing credits flowing from [REDACTED] to [REDACTED]. On this date, these items became non-partnership items. I.R.C. § 6231(b)(1)(C). Accordingly, the Internal Revenue Service has until [REDACTED] to assess the Adjustment. I.R.C. § 6229(f)(1).

I.R.C. § 6229(f)(1) further provides that the one year assessment statute of limitations "may be extended with respect to any partner by agreement entered into by the Secretary and such partner." Accordingly, the [REDACTED] consolidated group and the Internal Revenue Service can enter into an agreement to extend the one year statute of limitations for assessing the Adjustment.

In the case of a consolidated group, we can find guidance as to the appropriate entity to enter into consents related to the consolidated groups tax liability in the consolidated return regulations. Treas. Regs. § 1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent acts as the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). Accordingly, an officer of [REDACTED] should execute the consent to extend the statute of limitations prior to [REDACTED].

A "partner" is defined, inter alia, as "a partner in the partnership" and "any other person whose income tax liability under subtitle A is determined in whole or part by taking into account directly or indirectly partnership items of the partnership." I.R.C. § 6231(a)(2). Accordingly, [REDACTED] is a partner of both [REDACTED] and [REDACTED].

We recommend that an officer of [REDACTED] and a duly designated Internal Revenue Service employee execute a Form 872-F prior to [REDACTED]. We further recommend that the Form 872-F contain the following language:

[REDACTED] (EIN: [REDACTED]) executes this agreement on behalf of its consolidated subsidiary, [REDACTED] (EIN: [REDACTED]). This agreement extends the statute of limitations to assess 1) converted partnership items from [REDACTED] (EIN: [REDACTED]) through [REDACTED] (EIN: [REDACTED]) (see I.R.C. § 6231(a)(6)); any computational adjustments flowing from [REDACTED] (EIN: [REDACTED]) through [REDACTED] (EIN: [REDACTED]) (see I.R.C. § 6231(a)(6)); and 3) any affected items flowing from [REDACTED] Limited (EIN: [REDACTED]) through [REDACTED] (EIN: [REDACTED]) (see I.R.C. § 6231(a)(5)).

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IFM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the Form 872, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

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Should you have any questions regarding this matter, please contact Paul Darcy at (212) 264-5473 extension 256.

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